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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 22, 1999

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC990022

Ex Parte, In Re
Amendments to Retail
Franchising Act Rules

ORDER ADOPTING AMENDED RULES

On May 4, 1999, the Division of Securities and Retail Franchising ("Division") mailed notice of proposed amendments to the Commission's Retail Franchising Act Rules ("Rules") to all franchisors who had applications pending registration or registered under the Virginia Retail Franchise Act, § 13.1-557 et seq. of the Code of Virginia, and to other interested parties. Notice of the proposed amendments to the Rules was also published in several newspapers in general circulation throughout Virginia, and in the "Virginia Register of Regulations" on May 10, 1999. The notices described the proposed amendments, and afforded interested parties an opportunity to file written comments or requests for a hearing. No person filed any comments or request for hearing.

The Commission, upon consideration of the proposed amendments and the recommendations of the Division, finds that the proposed amendments should be adopted. Accordingly,

IT IS ORDERED THAT:

(1) The evidences of mailing and publication of notice of the proposed Rules amendments shall be filed in and made part of the record in this case.

(2) The proposed Rules amendments are adopted effective July 1, 1999. A copy of the Rules amendments is attached to and made part of this order.

(3) This matter is dismissed from the Commission's docket, and the papers herein shall be placed in the file for ended causes.

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CHAPTER 110.

RETAIL FRANCHISING ACT RULES AND FORMS.

21 VAC 5-110-20. Preliminary statement.

Follow these rules for each item in franchise applications and disclosures in the UFOC.

The following rules shall be adhered to with respect to applications for registration, applications for renewal of registration, and amendments filed ~~with the commission~~ pursuant to Chapter 8 (§ 13.1-557 et seq.) of Title 13.1 of the Code of Virginia. These applications shall be submitted to Virginia's state administrator: State Corporation Commission, Division of Securities and Retail Franchising, 1300 East Main Street, 9th Floor, Richmond, Virginia 23219.

21 VAC 5-110-30. ~~Original~~ Registration application; documents to file.

A. An application for registration of a franchise is made by filing with the Commission the following completed forms and other material:

1. Uniform Franchise Registration Application page (also known as "Facing Page"), Form A;
2. Supplemental Information page(s), Form B;
3. Certification page, Form C;
4. Uniform Consent to Service of Process, Form D;
5. If the applicant is a corporation or partnership, an authorizing resolution if the application is verified by a person other than applicant's officer or general partner;
6. Uniform Franchise Offering Circular;
7. Application fee (payable to the "Treasurer of Virginia"); and

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8. Auditor's consent (or a photocopy of the consent) to the use of the latest audited financial statements in the offering circular.

B. Examples of Forms A through D are printed at the end of these rules.

21 VAC 5-110-40. Pre-effective and post-effective amendments to the registration.

Upon the occurrence of a material change, the franchisor shall amend the effective registration filed at the Commission. An amendment to an application filed either before or after the effective date of registration ~~shall~~ may include only the pages containing the information being amended if pagination is not disturbed. The information being amended shall be identified by item, shall be underscored in red or ~~identified~~ highlighted in some other appropriate manner, ~~and shall be verified by means of the prescribed certification page (Form C).~~ Each amendment shall be accompanied by a facing page (Form A) on which the applicant shall indicate that the filing is an amendment. ~~The required fee shall accompany all post-effective amendments unless submitted in connection with an application for renewal.~~

An application to amend a franchise registration is made by submitting the following completed forms and other material:

1. Uniform Franchise Registration Application page (also known as "Facing Page"), Form A;
2. Certification page, Form C;
3. One clean copy of the updated Uniform Franchise Offering Circular pages;
4. One copy of the amended Uniform Franchise Offering Circular pages underscored in red or highlighted in some other appropriate manner; and
5. Application fee (payable to the "Treasurer of Virginia"). The fee shall accompany all post-effective amendments unless submitted in connection with an application for renewal.

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Examples of Forms A and C are printed at the end of these regulations.

21 VAC 5-110-50. Expiration; application to renew the registration.

A franchise registration expires at midnight on the annual date of the registration's effectiveness. An application to renew the franchise registration should be filed 30 days prior to the expiration date in order to prevent a lapse of registration under the Virginia statute. ~~The registrant shall file a renewal application by submitting a facing page (Form A) accompanied by a UFOC and the required fee. Alterations from the text of the UFOC previously filed as a part of registration shall be indicated by means of underscoring.~~

An application for renewal of a franchise registration is made by submitting the following completed forms and other material:

1. Uniform Franchise Registration Application page (also known as "Facing Page"), Form A;
2. Certification page, Form C;
3. Updated Uniform Franchise Offering Circular;
4. One copy of the amended Uniform Franchise Offering Circular pages underscored in red or highlighted in some other appropriate manner; and
5. Application fee (payable to the "Treasurer of Virginia").

Examples of Forms A and C are printed at the end of these regulations.

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21 VAC 5-110-60. Automatic effectiveness (optional).

If the registrant desires, an application to amend or renew an effective registration ~~which is~~ may be accompanied by an executed Affidavit of Compliance on Form E and filed in accordance with 21 VAC 5-110-40 or 21 VAC 5-110-50 ~~above,~~ The application shall become effective immediately upon receipt by the Commission (or upon such later date as the applicant indicates in writing to the Commission) unless one or more of the following is applicable:

1. The franchisor has, since the effective date of its most recent application, been convicted of any crime or been held liable in any civil action by final judgment (if such crime or civil action involved a felony, an act of fraud, a misdemeanor involving a franchise, or a violation of the Virginia Retail Franchising Act).
2. The franchisor is insolvent or in danger of becoming insolvent, either in the sense that its liabilities exceed its assets (determined in accordance with "generally accepted accounting principles") or in the sense that it cannot meet its obligations as they mature.
3. The revised disclosure document submitted in connection with the application to amend/renew is not in compliance with the requirements of 21 VAC ~~[5-110-80-E~~ 5-110-80 and 5-110-90], ~~below.~~

If the application does not qualify for automatic effectiveness, it shall become effective as of the date it is granted by the Commission.

21 VAC 5-110-70. Consent to service of process.

If the franchisor is not a Virginia corporation, ~~or~~ a foreign corporation or other entity authorized to transact business in the Commonwealth of Virginia, the franchisor shall execute the Consent to Service of Process on Form D designating the Clerk of the State Corporation Commission, 1300 East Main Street, First Floor, Richmond, VA, 23219, as the agent authorized

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to receive service of process for the franchisor in Virginia. If the franchisor is a Virginia corporation ~~or~~ a foreign corporation or other entity authorized to transact business in the Commonwealth of Virginia, a Consent to Service of Process is not necessary under this section.

The Division of Securities and Retail Franchising does not ~~handle~~ administer the qualification of foreign corporations. Qualification of foreign corporations is handled by the Clerk of the State Corporation Commission (804) 371-9672, P. O. Box 1197, Richmond, VA 23218. Qualification must be completed prior to the filing of the application.

21 VAC 5-110-85. Disclosure of confidential information.

- A. This section governs the disclosure by the Commission of information or documents obtained or prepared by any member, subordinate or employee of the Commission in the course of any examination or investigation conducted pursuant to the provisions of the Retail Franchising Act (§ 13.1-557 et seq. of the Code of Virginia). It is designed to implement the provisions of § 13.1-567 that permit disclosure of information to governmental and quasi-governmental entities approved by rule of the Commission.
- B. The Director of the Division of Securities and Retail Franchising or his designee is hereby authorized to disclose information to the entities enumerated in subsections D, E and F of this section. Disclosure shall be made only for the purpose of aiding in the detection or prevention of possible violations of law or to further administrative, legislative or judicial action resulting from possible violations of law. As a condition precedent to disclosure a writing shall be obtained from the receiving entity undertaking that it will exercise reasonable measures to preserve the confidential nature of the information.
- C. Disclosure may be made only under the following circumstances:

 - 1. In response to an entity's request for information relating to a specific subject or person.

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2. By disseminating to an entity information which may indicate a possible violation of law within the administrative, regulatory or enforcement responsibility of that entity.
 3. To participate in a centralized program or system designed to collect and maintain information pertaining to possible violations of securities, investment advisory, retail franchising or related laws.
 4. To the extent necessary for participation in coordinated examinations or investigations.
- D. The following are approved governmental entities (including any agencies, bureaus, commissions, divisions or successors thereof) of the United States:
 1. Board of Governors of the Federal Reserve System or any Federal Reserve Bank.
 2. Commodity Futures Trading Commission.
 3. Congress of the United States, including either House, or any committee or subcommittee thereof.
 4. Department of Defense.
 5. Department of Housing & Urban Development.
 6. Department of Justice.
 7. Department of Treasury.
 8. Federal Deposit Insurance Corporation.
 9. Office of Thrift Supervision.
 10. Federal Trade Commission.
 11. Postal Service.
 12. Securities & Exchange Commission.
 13. Comptroller of the Currency.

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14. Federal Bureau of Investigation.
15. Any other federal agency or instrumentality which demonstrates a need for access to confidential information.

E. The following are approved nonfederal governmental entities:

1. The securities or retail franchising regulatory entity of any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, state legislative bodies and state and local law-enforcement entities involved in the detection, investigation or prosecution of violations of law.
2. The securities or retail franchising regulatory entity of any foreign country, whether such entity is on a national, provincial, regional, state or local level, and law-enforcement entities within such countries.

F. The following are approved quasi-governmental entities:

1. American Stock Exchange.
2. Chicago Board Options Exchange.
3. Midwest Stock Exchange.
4. Municipal Securities Rulemaking Board.
5. National Association of Attorneys General.
6. National Association of Securities Dealers, Inc.
7. New York Stock Exchange.
8. North American Securities Administrators Association, Inc.
9. Pacific Stock Exchange.
10. Philadelphia Stock Exchange.
11. Securities Investor Protection Corporation.

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12. National White Collar Crime Center.
13. National Association of Securities Dealers Regulation, Inc.
14. Any other quasi-governmental entity which demonstrates a need for access to confidential information.

~~COMMENTARY DATED JUNE 21, 1994 ON THE UNIFORM FRANCHISE OFFERING CIRCULAR.~~

INTRODUCTION

~~On April 25, 1993, the North American Securities Administrators Association ("NASAA") adopted amendments to the Uniform Franchise Offering Circular ("new UFOC"). Adoption followed several years of work by the NASAA Franchise and Business Opportunities Committee ("NASAA Committee").~~

~~After adoption of the new UFOC, members of the Franchise Advisory Committee ("Advisory Committee") and other interested parties brought to the NASAA Committee's attention certain issues under the new UFOC where they believed additional interpretation and clarification would be helpful.~~

~~In response to the concerns of the Advisory Committee, which consulted with the NASAA Committee during the process of drafting the new UFOC, the NASAA Committee agreed that a "Commentary" to the new UFOC would be valuable to franchisors drafting offering circulars pursuant to the new UFOC and to franchise examiners and enforcement agencies reviewing offering circulars. The Commentary is not intended to change any substantive requirements of the new UFOC and, therefore, does not require formal approval by NASAA or by the Federal Trade Commission.~~

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~~The NASAA Committee and the Advisory Committee met in Richmond, Virginia in January of 1994 to discuss these interpretational concerns. This Commentary is a result of the Richmond meeting and additional discussions and drafting since the meeting. The Commentary is intended to clarify and provide interpretations of specific provisions of the new UFOC. The issues covered by the Commentary are presented in a question and answer format.~~

~~Issue #1—Instruction 265—Phase-In~~

~~The new UFOC is effective 6 months after the last franchise regulatory state (or the FTC) approves it, but no later than January 1, 1995. Can a franchisor begin using the new format in a state which has approved the new UFOC (and after FTC approval) but before the national effective date?~~

~~Answer~~

~~A circular prepared in accordance with the new UFOC may be used in a state after that state and the FTC have approved the new format. (FTC approval was given on December 30, 1993.) Thus, after state and FTC approval, either a new or old format circular may be used in that state. After the national effective date, only a new UFOC may be used in connection with an initial filing or renewal.~~

~~Issue #2—Instruction 265—Amendments~~

~~If a franchisor files an amendment (for example, to change personnel in Item 2 or add litigation in Item 3) after the national effective date but before its next renewal date, is it required to change over the entire UFOC to the new format at that time?~~

~~Answer~~

~~An amendment filing is not required to be on the new format until after the franchisor submits a new UFOC in its first renewal (or annual report) after the national effective date (however, see FTC Staff Advisory Opinion 94-1 CCH Business Franchise Guide ¶6457).~~

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~~It may be advisable, but is not required, for a franchisor to amend its registration before the national effective date to change over to the new UFOC (to avoid potential delays in review and approval during 1995). Because of the nature of this type of amendment filing (that is, an amendment only for the purpose of changing over to the new UFOC), a franchisor should not have to stop offering franchises during the review period.~~

~~Issue #3 – Instruction 265 – "Re-Registration"~~

~~The word "re registration" appears in Instruction 265. What does it mean?~~

~~Answer~~

~~The word "re registration" was intended to cover a franchisor who had been registered in the past but whose registrations have since lapsed and now is filing to become registered again.~~

~~Issue #4 – Instruction 265 – Phase-In for Non-Registration States~~

~~If a franchisor has not registered its offering in any state, when is it required to convert to the new UFOC?~~

~~Answer~~

~~The FTC phase in requirements will apply.~~

~~Issue #5 – Item 1 – "Predecessor"~~

~~Is the definition of "predecessor" in instruction iii of Item 1 applicable to Item 1 only or is it applicable throughout the UFOC, for example, to the use of "predecessor" in Items 3 and 4?~~

~~Answer~~

~~The definition of predecessor in instruction iii to Item 1 should be applied throughout the UFOC.~~

~~Issue #6 – Item 1 – Predecessor Disclosure Period~~

~~Is the ten year period regarding predecessor disclosure in instruction iv to Item 1 applicable to Item 1 only or is it also applicable to predecessor information in Items 3 and 4?~~

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Answer

~~The ten year period referred to instruction iv of Item 1 is also applicable to predecessor disclosure in Items 3 and 4.~~

Issue #7 – Item 1 – "Affiliate"

~~What definition of "affiliate" should be used in the new UFOC?~~

Answer

~~As a general rule in the new UFOC, an "affiliate" is "a person (other than a natural person) controlled by, controlling or under common control with the franchisor". This definition applies to all Items unless a particular Item defines it differently or limits its use. For example, Item 1, instruction v, limits the general definition to an affiliate "which is offering franchises in any line of business or is providing products or services to the franchisees of the franchisor". Also, Item 3, instruction i, limits the general definition to an affiliate "offering franchises under the franchisor's principal trademarks"~~

Issue #8 – Item 1 – Government Regulations

~~Item 1E, instruction vi, refers to "regulations specific to the industry in which the franchise business operates." How broadly does this extend? How much detail is required about these regulations? For example, a restaurant franchisor might refer to food service health and sanitation codes since those are industry focused. Child labor laws, while not industry specific, impact on the fast food business. Should they be mentioned and, if so, what about other general laws that have a significant impact on a particular type of business format?~~

Answer

~~The instruction states that it is unnecessary to refer to laws that "apply to businesses generally". A fast food franchisor, therefore, would not be required to refer to child labor laws or other general categories of laws even if those laws have a substantial or disproportionate impact on~~

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~~the business being franchised. In addition, generally applicable regulations such as local signage restrictions, no fault liability insurance requirements, business licensing laws (as opposed to professional licensing laws), tax regulations and labor laws need not be disclosed. Only laws that pertain solely and directly to the industry sector of which the franchised business is a part must be disclosed in this Item. Examples include:~~

- ~~• A real estate brokerage franchisor should disclose that broker licensing laws will apply to the franchisee.~~
- ~~• An optical products franchisor should disclose the existence of applicable optometrist/optician staffing regulations and licensing requirements.~~
- ~~• A lawn care franchisor should disclose that certain laws regulating pesticide application to residential lawns will require that franchisees post notices on treated lawns.~~

~~In any case where industry specific laws are disclosed, statutory citation and identification are unnecessary; the disclosure should state that a specific type of regulation exists and that the prospective franchisee should investigate the matter further.~~

Issue #9 – Item 3 – Confidential Settlements

~~Under the old UFOC, franchisors were not required to disclose the terms of confidential settlements. Are the terms of confidential settlements required to be disclosed under the new UFOC?~~

Answer

~~If a settlement agreement must be disclosed under Item 3B of the new UFOC, all material settlement terms must be disclosed, whether or not the agreement is confidential. However, because of difficulties in retrieving information and/or obtaining releases from confidentiality agreements, for confidential settlements entered into before April 25, 1993 (the date of~~

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~~NASAA's approval of the new UFOC), a franchisor may disclose only the information required under the old UFOC.~~

~~Issue #10—Item 3—Dismissals~~

~~Based on the last sentence of section ii of Item 3, Definitions, may actions which are dismissed in the context of a settlement be omitted from Item 3?~~

~~Answer~~

~~The last sentence of section ii of Item 3, Definitions, allows the omission of an action which is dismissed as a result of a concluded adversarial proceeding, but is not intended to cover dismissal of an action in connection with a settlement. The standards for determining whether a settlement must be disclosed (or may be omitted) are described in section iv of Item 3, Definitions.~~

~~Issue #11—Item 3—Other Material Actions~~

~~Are only actions of the types enumerated in Item 3 required to be disclosed?~~

~~Answer~~

~~The requirement that a franchisor disclose actions which include allegations of violations of franchise, antitrust or securities law, or fraud, unfair or deceptive practices, or comparable allegations should not be narrowly construed in drafting disclosure for Item 3. Most franchise laws generally prohibit, among other things, omissions of material fact. The courts have generally interpreted "material facts" or "materiality" to include information which a reasonable investor would deem to be significant when making an investment decision. Franchisors should not limit disclosure solely to those items enumerated in Item 3 if a materiality analysis requires disclosure of an action.~~

~~Issue #12—Item 3—Foreign Litigation~~

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~~Are franchisors required to disclose foreign (outside the United States) actions in Item 3 of the UFOC?~~

~~Answer~~

~~Item 3 is not limited to disclosure of actions which have been filed in the United States.~~

~~Franchisors must disclose all material litigation, even if the actions are in a foreign court or arbitration forum.~~

~~Issue #13 – Item 4 – Bankruptcy~~

~~Item 4 requires disclosure of bankruptcy information about "officers." Does this include everyone listed in Item 2?~~

~~Answer~~

~~Only "officers" are required to make bankruptcy disclosures in Item 4, not every person listed in Item 2. "Officers" includes those individuals whose duties include some or all of the duties typically performed by the chief executive and chief operating, financial, franchise marketing, training and service officers. It also includes "de facto" officers, those individuals who have management responsibility in connection with the operation of the franchisor's business relating to the franchises offered by the offering circular but whose title does not reflect the nature of the position. A member of the Board of Directors who is not also an officer (as described above) is not covered by this disclosure.~~

~~Issue #14 – Item 5 – Initial Fees Paid to Affiliates~~

~~If the franchisee makes any payments to affiliates of the franchisor before the franchisee's business opens, must this be disclosed as an "initial fee"?~~

~~Answer~~

~~"Initial fees" includes all fees and payments received by the franchisor and its affiliates before the franchisee's business opens.~~

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Issue #15 – Item 7 – Initial Phase

~~The new UFOC requires disclosure of certain information during the "initial phase" of operation of the franchised business and indicates that it is ordinarily 3 months. Is the initial phase always 3 months? Or must a franchisor use a longer period if that is typical in its industry? Also, does the "initial phase" requirement apply to any line item in Item 7 other than "additional funds"?~~

Answer

~~A franchisor may use either a 3 month initial phase, or an initial phase longer than 3 months if the length of time is a "reasonable period for the industry" and if earnings claims problems can be avoided (for example, by complying with Item 19). Only the additional funds line item is covered by the "initial phase" requirement, but it may also be appropriate in some cases to disclose real estate costs during the initial phase. In addition, fees paid to the franchisor during the initial phase may be disclosed, so long as earnings claims problems can be avoided (for example, by complying with Item 19). All other expenditures, such as for inventory, should only be stated through the franchise opening date.~~

Issue #16 – Item 8 – Scope

~~A variety of terminology is used throughout Item 8 to refer to a wide range of sourcing restrictions. For example, although the requirements refer to all sourcing restrictions, reference is made in Instruction iii to "required purchases" and in Instruction vii to "designated" suppliers.~~

~~What is the scope of Item 8?~~

Answer

~~Item 8 requires disclosure of all restrictions on the freedom of the franchisee to obtain goods, real estate, services, etc. from sources of the franchisee's choosing, and of all means by which a franchisor may derive revenue as a result of franchisee purchases or leases of goods and services. As a result, for example, Instruction iii encompasses all revenues a franchisor (or its~~

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~~affiliates) derives from purchases and leases of products and services to franchisees. Also, Instruction vii requires the disclosure of all rebates paid by designated suppliers, approved suppliers and suppliers whose goods and services meet specifications.~~

~~Issue #17 – Item 8 – Rebates for Advertising~~

~~If a supplier makes payments to an advertising fund or advertising co-op, must this be reported?~~

~~Answer~~

~~If the payments are made to an independent advertising co-op, disclosure is not required. Payments to an advertising fund directly or indirectly controlled by the franchisor must be reported.~~

~~Issue #18 – Item 8 – Rebates from Other Parties~~

~~If the supplier of goods to franchisees is a distributor who buys from a manufacturer and the manufacturer pays rebates to the franchisor, must this be disclosed?~~

~~Answer~~

~~Rebates paid by all third parties involved in the product distribution process must be disclosed.~~

~~Issue #19 – Item 8 – Rebates to Affiliates~~

~~If rebates are paid by suppliers to an affiliate of the franchisor, must these rebates be disclosed?~~

~~Answer~~

~~Rebates paid by suppliers to the franchisor's affiliates must be disclosed.~~

~~Issue # 20 – Item 8 – Rebates – Identity of Suppliers~~

~~Although the sample answer identifies suppliers who pay rebates, the instruction does not require such identification. Must the franchisor identify by name suppliers who pay rebates?~~

~~Answer~~

~~Franchisors are not required to identify by name any suppliers who pay rebates.~~

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~~Issue #21 – Item 8 – Product Discounts~~

~~Instruction vii indicates that a franchisor who pays less than its franchisees for products bought from a common source has received a "payment" from a supplier. Is this intended to encompass every situation where a franchisor pays less than a franchisee?~~

~~Answer~~

~~If a franchisor receives a "special deal" on the purchase of products that a vendor also supplies to franchisees, this constitutes a "payment" to the franchisor for purposes of this disclosure. It is not a payment, however, if a franchisor takes advantage of a volume discount or other program which the supplier makes available to all other buyers, including franchisees.~~

~~Issue #22 – Item 8 – Rebate Reporting~~

~~Can a franchisor choose to report either the dollar amount of the rebates or the percentage paid on purchases by franchisees?~~

~~Answer~~

~~A franchisor can choose to report rebates in either of 2 formats: the actual dollar amounts paid or the percentage rebate based on franchisee purchases. Thus, if a number of suppliers pay rebates and a franchisor chooses the latter reporting method, its circular might state that it received rebates from suppliers ranging from 1% to 5% of the amount of purchases by franchisees from such suppliers.~~

~~Issue #23 – Item 8 – Cooperatives~~

~~Must cooperatives be identified under Item 8F?~~

~~Answer~~

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~~If a franchisee is required to participate in a purchasing or distribution cooperative, it must be identified. If participation is voluntary, it need not be identified but the franchisor must disclose that one or more cooperatives exist.~~

~~Issue #24 – Item 11 – Advertising~~

~~A franchisor must account for its use of monies in the advertising fund by providing a disclosure which allocates dollars to production, media costs, administrative expenses and other. If franchisor personnel are involved in production activities, can such expenses be allocated to production rather than administration?~~

~~Answer~~

~~A franchisor's internal costs associated with production of advertising materials may properly be characterized as production expenses. However, the franchisor must have a reasonable basis for claiming the allocation at the time the disclosure is made.~~

~~Issue #25 – Item 11 – Operating Manuals~~

~~Can the table of contents (which may be lengthy if there are multiple manuals) be disclosed in an exhibit rather than in the body of text to Item 11? Also, can a franchisor require that a franchisee sign a confidentiality agreement in connection with the "viewing" of a manual? If so, must the confidentiality agreement be attached as an exhibit to the UFOC and do the FTC waiting periods apply?~~

~~Answer~~

~~Tables of contents can be incorporated as an exhibit to the UFOC. A confidentiality agreement must be disclosed in the UFOC and the franchisor cannot require that it be signed until 10 business days have elapsed from delivery of the offering circular and 5 business days have elapsed from delivery of the execution copy of the confidentiality agreement.~~

~~Issue #26 – Item 15 – Agreements by Owners~~

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~~Does Item 15 require the disclosure of all agreements that apply to the franchisee's owners?~~

Answer

~~All agreements relating to the franchise that are binding on the franchisee's owners must be disclosed in this Item.~~

Issue #27 – Item 20 – Subfranchise/Area Development Statistics

~~Does Item 20 require disclosure of data regarding area development, master franchise, subfranchise and similar arrangements in addition to unit/outlet franchise statistics?~~

Answer

~~All area development, master franchise, subfranchise or similar arrangements must be disclosed in Item 20 of the franchisor's offering circular. If there are only a few arrangements like this in a system, the disclosure may be provided in the text or in a subordinate table rather than in the main chart. Whatever format is used, it must include all of the information which would be required in the chart.~~

Issue #28 – Item 20 – System Statistics in Subfranchisor Offering Circulars

~~In an offering circular prepared by a subfranchisor in a particular region, must its Item 20 also reflect national statistics for the franchisor in addition to the statistics from the subfranchisor's region?~~

Answer

~~In the example, Item 20 must contain 2 sets of charts: one set for statistics from the subfranchisor's region and one set reflecting national data for the franchise being offered by the franchisor and other subfranchisors.~~

Issue #29 – Item 20 – Former Franchisees

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~~Item 20E requires a list of home addresses and phone numbers of former franchisees. Can a franchisor answer this to the best of its knowledge? If the former franchisee is a corporation, is the corporate headquarters a home address?~~

Answer

~~A franchisor must disclose the last known home address of a former franchisee. Where the former franchisee is a corporation, the franchisor must disclose either the business address of the corporation or the address of a principal officer of the corporation.~~

CONCLUSION

~~This Commentary is intended to be a living document which provides interpretative assistance to all members of the franchise community and regulatory authorities. As the need arises at reasonable intervals in the future, the NASAA Committee may consider additions, deletions and amendments to the Commentary.~~

~~The NASAA Committee acknowledges the assistance of many segments of the franchise community for their contributions to this Commentary and, in particular, its Advisory Committee, whose current members are as follows:~~

Dennis Wieczorek, Chair	Mark Hamer
Rupert Barkoff	H. Bret Lowell
Anita Blair	George Rummel
Patrick Carter	Andrew Selden
James Conohan	Neil Simon
Mark Forseth	Leonard Swartz

~~Eileen Harrington (Federal Trade Commission) ex officio~~

~~The Advisory Committee provided substantial assistance in the drafting of the new UFOC and has helped to educate the franchise community and ease the transition to the new format. The Commentary is a product of the cooperative efforts of the NASAA Committee and the Advisory Committee, and we look forward to increased cooperation in the future.~~

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<hr/>	NASAA Franchise and Business Opportunities Committee
<hr/>	Steve Maxey, Chair (Virginia)
<hr/>	Delia Burke (Maryland)
<hr/>	Martin Cordell (Washington)
<hr/>	Patricia Struck (Wisconsin)
<hr/>	Jim Turner (Alberta)
<hr/>	Jocelyn Whittey (North Dakota)

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Form C - Certification

~~7/1/95~~ 7/99

I certify under penalty of law that I have read and know the contents of this application and the documents attached as exhibits and incorporated by reference and that the statements in all these documents are true and correct.

Executed at _____, _____, ~~19~~_____

(Signature(s) of Franchisor and/or Subfranchisor)

By _____

(Seal)

Title _____

STATE OF _____)
) ss.
COUNTY OF _____)

Personally appeared before me this _____ day of _____, ~~19~~_____ the above-named _____ and _____ to me known to be the person(s) who executed the foregoing application (as _____ and _____ respectively, of the above-named applicant) and (each), being first duly sworn, stated upon oath that said application, and all exhibits submitted herewith, are true and correct.

(Notary)

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CORPORATE ACKNOWLEDGMENT

STATE OF)
) ss.
COUNTY OF)

On this ____ day of _____, 19____, before me _____
(Name of Notary)

the undersigned officer, personally appeared _____ and _____ known
personally to me to be the _____ President and _____ Secretary, respectively, of
the above-named corporation, and that they, as such officers, being authorized to do so, executed
the foregoing instrument for the purposes therein contained, by signing the name of the corporation
by themselves as such officers.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

(Notary Public)

(NOTARIAL SEAL)

My commission expires: _____

INDIVIDUAL OR PARTNERSHIP ACKNOWLEDGMENT

STATE OF)
) ss.
COUNTY OF)

On this ____ day of _____, 19____, before me,
_____, the undersigned officer, personally appeared
_____ to me personally known and known to me to be the same
person(s) whose name(s) is (are) signed to the foregoing instrument, and acknowledged the
execution thereof for the uses and purposes therein set forth.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

(Notary Public)

FRANCHISE ACT REGULATIONS

(NOTARIAL SEAL) My commission expires: _____

FRANCHISE ACT REGULATIONS

Form D

~~7/1/95~~ 7/99

UNIFORM CONSENT TO SERVICE OF PROCESS

_____, (a corporation organized under the laws of the State of _____) (a partnership) (an individual) _____, irrevocably appoints the _____ (regulatory authority) and the successors in office, its attorney in the State of _____ for service of notice, process or pleading in an action or proceeding against it arising out of or in connection with the sale of franchises, or a violation of the franchise laws of _____, and consents that an action or proceeding against it may be commenced in a court of competent jurisdiction and proper venue within _____ by service of process upon this officer with the same effect as if the undersigned was organized or created under the laws of _____ and had lawfully been served with process in _____. It is requested that a copy of any notice, process or pleading served this consent be mailed to:

(Name and address)

Dated: _____, 19____.

By _____

Title _____

(SEAL)

By _____

Title _____

FRANCHISE ACT REGULATIONS

FORM E
Rev. ~~11/96~~ 7/99

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
Division of Securities and Retail Franchising

Affidavit of Compliance -- Franchise Amendment/Renewal

STATE OF _____)
)ss;
COUNTY OF _____)

_____, being duly sworn, deposes and says:

1. This affidavit is submitted in connection with an application to amend/renew the effective franchise registration of _____ in accordance with 21 VAC 5-110-40 or 21 VAC 5-110-50. (Name of Franchisor/Subfranchisor)
2. To the best of my knowledge, the franchisor/subfranchisor on whose behalf the application to amend/renew is made:
 - a. Has not, since the effective date of its most recent application, been convicted of any crime or been held liable in a civil action by final judgment involving a felony, an act of fraud, a misdemeanor involving a franchise, or a knowing or willful violation of the Virginia Retail Franchising Act; and
 - b. Is not insolvent or in danger of becoming insolvent, either in the sense that its liabilities exceed its assets (determined in accordance with Generally Accepted Accounting Principles) or in the sense that it cannot meet its obligations as they mature.
3. The revised franchise disclosure document submitted in connection with the application to amend/renew is, to the best of my knowledge, in compliance with the requirements of 21 VAC 5-110-80 and 21 VAC 5-110-90.

Executed at _____, _____ 19 ____.

Name of Franchisor/Subfranchisor

By: _____ (SEAL)

Title: _____

Select Amendment Effective Date

Select Renewal Effective Date

____ Immediately Upon Request

____ Immediately Upon Receipt

____ 19 ____

____ 19 ____

Note: When a renewal application includes amendments, a selection should be made for both the amendments and the renewal. If no selection is made, the effectiveness will be immediately upon receipt by the Commission.

FRANCHISE ACT REGULATIONS

Subscribed and sworn to before me, a Notary Public, this _____ day of _____,
~~19~~_____.

_____ My Commission Expires: _____ (NOTARY'S SEAL)
(NOTARY PUBLIC)

FRANCHISE ACT REGULATIONS

Form F

~~7/1/95~~ 7/99

GUARANTEE OF PERFORMANCE

For value received _____
located at _____, absolutely and
unconditionally _____ (Address)
guarantees the performance by _____
located at _____ of all of
the obligations of _____ (Address)
under its franchise registration in the State of
_____ dated
_____ (Name of state or province)
_____ and of its Franchise
Agreement. _____ (Effective date of renewal)
This guarantee continues until all obligations of _____
under the franchise registration and franchise agreement are satisfied. _____
_____ is not discharged from liability if a claim by the franchisee against
_____ remains outstanding. Notice of acceptance is waived. Notice of default on
the part of _____ is not waived. This guarantee is binding on
_____ and on its successors and assignees.

_____ executes this guarantee at
(Affiliate)
_____ on the ____ day of _____ 19 ____.

(Affiliate)

By: _____

Title: _____

FRANCHISE ACT REGULATIONS

FORM G

~~7/1/95~~ 7/99

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
DIVISION OF SECURITIES AND RETAIL FRANCHISING

FRANCHISOR'S SURETY BOND

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the State Corporation Commission has required _____
_____ to furnish a surety bond as a condition of registration (or renewal of registration) of
its franchise as defined in Title 13.1, Chapter 8, Code of Virginia (1950), as amended, and
conditioned as provided by law.

NOW, THEREFORE, _____, as principal and
_____, as surety, acknowledge themselves indebted and firmly bound unto the
COMMONWEALTH OF VIRGINIA in the penal sum of _____ thousand dollars to the
payment of, which will and truly be made, they jointly and severally bind themselves, their
successors and assigns, firmly by these presents.

THE CONDITIONS of this obligation are such that if the principal satisfies all criminal
and civil penalties, or either, provided in Title 13.1, Chapter 8, Code of Virginia (1950), as
amended, for which said principal may become liable, then this obligation shall be null and void;
otherwise to be and remain in full force and effect.

IT IS AGREED that this obligation is to remain in force until cancelled by the surety by
thirty days written notice to the principal and the State Corporation Commission.

WITNESS the following signatures and seals this _____ day of _____, ~~19~~____.

_____(SEAL)
Principal

_____(SEAL)
Surety

by Attorney-in-fact

Countersigned:

Name of Agency
by: _____
Registered Virginia Agent